

PROPOSED LOCAL RULES AMENDMENTS

Comments due by April 29, 2011

Comments can be sent by e-mail to
[Local Rules Comments@insb.uscourts.gov](mailto:Local_Rules_Comments@insb.uscourts.gov) or by regular mail to Kevin
Dempsey, P.O. Box 44978, Indianapolis, Indiana 46244.

B-1007-1. LISTS, SCHEDULES AND STATEMENTS; TIME LIMITS

(c) Extensions of Time

(1) ~~Requests~~ ~~Motions~~ Generally

Any ~~request~~ ~~motion~~ for an extension of time to file the initial lists, schedules, statements and other documents required to commence a new case shall be treated by the Court as a request for the maximum allowable extension of time for each applicable chapter and the Clerk will provide notice of the opportunity to object except as described in subparagraphs (2) and (3) below.

Comments

Changed to clarify that event to use is a motion.

B-1007-2. NOTICING, BALLOTING AND CLAIMS AGENTS

(c) Claims Agent

If a Claims Agent is to be employed, then the Agreement or Employment Order shall address each of the following areas:

(10) Effect of Conversion

The Agreement or the Employment Order shall provide for treatment and disposition of Proofs of Claim if the case is converted to Chapter 7.

Comments

Added to the list of issues that must be considered in retention of a claims agent the question of what happens after conversion.

B-1015-1. CONSOLIDATION OR JOINT ADMINISTRATION OF CASES PENDING IN SAME COURT

(a) Joint Cases

Unless otherwise ordered by the Court, a joint case commenced pursuant to 11 U.S.C. § 302(a) shall be jointly administered. The separate estates of Debtors in a joint case will only be consolidated upon motion, after notice.

(b) Manner of Joint Administration.

Unless otherwise ordered, jointly administered cases shall be administered as follows:

(1) Designation of Lead Case

The case with the lowest number shall be designated as the “Lead Case”.

(2) Caption

All papers, except for the petition, schedules, statement of financial affairs, Proofs of Claim and notices of meetings of creditors pursuant to 11 U.S.C. §341, shall be captioned under the Lead Case name and number followed by the words “Jointly Administered” unless one of those cases is for an individual Debtor; then the caption shall include the Lead Case and the case name and number for any individual Debtor. A proof of claim shall indicate only the case name and number of the case in which the claim is asserted. The caption shall not include the word “Consolidated” to refer to joint administration.

(3) Docket

A single case docket shall be maintained after the entry of the order for joint administration under the case number of the Lead Case. If joint administration is terminated, documents filed after the order terminating joint administration shall be filed and docketed in the separate cases.

(4) Claims

A separate claims register shall be maintained for each case. Claims shall be filed only in the name and case number of the Debtor against which the claim is asserted. A separate claim must be filed in each jointly administered case in which a claim is asserted.

(5) Ballots

Ballots shall be styled only in the case name and number of the member

case for which the plan being voted on was filed.

(c) Substantive Consolidation

Unless otherwise ordered, substantively consolidated cases shall be administered as follows:

(1) Lead Case

The case with the lowest number shall be designated as the “Lead Case”.

(2) Caption

All papers in substantively consolidated cases shall contain in the caption only the name and case number of the Lead Case, unless one of those cases is for an individual Debtor; then the caption shall include the Lead Case and the case name and number for any individual Debtor.

(3) Claims

After consolidation all claims shall be filed in the Lead Case. Any claim filed and docketed prior to the consolidation shall be considered as if filed in the substantively consolidated cases but shall remain on the claims register of the originally filed case.

Comments

Edited for clarity, based on experiences since the rule was implemented.

B-1017-1. CONVERSION AND DISMISSAL

(c) Obtaining Relief from Dismissal Order

(2) Requirement of Motion for Relief from Dismissal Order

If the dismissed case has not been closed or it has been reopened, then the party shall file the motion for relief from dismissal order (unless it was filed with the motion to reopen). If the case was dismissed because of a failure to file required documents, contemporaneously with the motion(s), the movant must submit the documents required, **or** file a motion seeking an extension of time for submitting those documents, ~~or file a notice of~~

~~submission stating that the documents are no longer required.~~ If the case was dismissed for failure to pay the filing fee or an installment, then the movant must, contemporaneously with the motion for relief from dismissal order, pay the filing fee or any missed fee installment, or file a motion seeking an extension of time to pay the fees. If the movant fails to comply with these requirements the motion for relief from dismissal order will not be considered.

(d) Conversion

A Debtor seeking to convert from Chapter 12 or 13 to ~~any other chapter~~ **Chapter 7** shall file a notice of conversion pursuant to Fed.R.Bankr.P. 1017(f)(3). A Debtor's motion to convert pursuant to Fed.R.Bankr.P. 1017(f)(2) shall be served on the trustee, if any, and the UST.

Comments

Edited (c)(1) because as drafted gave false impression some reason could be given for not filing required case documents. Edited (d) because a motion to convert is required if changing from Chapter 12 or 13 to one of the other reorganization chapters.

**B-2002-1. NOTICES TO CREDITORS, EQUITY SECURITY HOLDERS,
AND UNITED STATES TRUSTEE**

(b) Notices Prepared and Distributed by Parties

A notice prepared and distributed by a party shall be signed by the party, not the Clerk or the Judge, unless its form has been approved by a Courtroom Deputy. Notices in a Chapter 11 case shall be docketed separately.

(e) Returned and Undeliverable Mail

(2) Duty to Provide Accurate Address

The Debtor shall file a Notice of Change of Address for any creditor or party in interest whose address appears undeliverable based either on the Debtor's receipt of returned mail or information received from the Court's noticing agent. In addition, the Debtor shall serve the documents required by S.D.Ind. B-1009-1(b)(2). If the Debtor is unable to determine a correct address for a creditor or party in interest, the Debtor ~~may~~ **shall** file a ~~notice~~

Notice of Unavailable Address specifying the creditor's name and reporting that a correct address cannot be located. Upon the filing of such a notice, the Clerk shall code the address so that no further notices or orders are sent to that creditor or party in interest.

Comments

New subparagraph (b) provides better guidance to counsel on when the Clerk's signature can be placed on a notice prepared and sent by counsel, and also advises that in Chapter 11 cases the notices must be docketed separately. Including a notice as an attachment to another pleading makes it difficult to find. (If (b) is adopted, lettering of all other subparagraphs must be edited and references to 2002-1(b) in other rules changed.) Proposed change to (e), formerly (d), makes it clear which ECF event should be used, and makes filing mandatory.

B-2016-1. APPLICATIONS FOR COMPENSATION FOR SERVICES RENDERED AND REIMBURSEMENT OF EXPENSES

(a) Generally

Applications for compensation and reimbursement of expenses shall comply with the national fee guidelines promulgated ~~on March 22, 1995,~~ by the Executive Office for United States Trustee pursuant to 28 U.S.C. § 586(a)(3)(A)(i) and ~~the~~ **any** Policy of the United States Trustee for Region 10 for Implementation of Fee Guidelines ~~dated January 30, 1997, including any amendments.~~ Applications for compensation and reimbursement of expenses shall be filed separately for the trustee and each professional.

Comments

Opted to make references to UST guidelines less specific, to accommodate possible changes to those guidelines.

B-4001-1. MOTIONS FOR RELIEF FROM STAY AND MOTIONS TO EXTEND OR IMPOSE THE STAY

(2) Notice; Disposition

(A) Chapters 7, ~~11~~, 12, and 13

In cases pending under any chapter except Chapter 11, notice of the

motion shall be served by the movant on the Debtor, parties that have entered an appearance, any trustee, and the UST, except as otherwise provided by S.D.Ind. B-2002-1(b). If the motion also seeks abandonment, notice must be sent to all creditors and parties in interest. The notice shall allow ~~at least~~ fourteen (14) days from the date of service to file objections. Along with the notice, the moving party shall file a copy of the motion and a certificate of service listing the name and address of each entity served and the date and manner of service. A sample notice is available at the Court's website. If no proper response to the motion is filed the Court may grant relief from the stay without further notice or hearing. At any hearing on the motion the Debtor or objecting party has the burden of establishing any payment alleged to have been made but not set forth in the payment history.

(B) Chapter 11

In cases pending under Chapter 11, **unless the Court has previously entered a case management order covering preparation and distribution of notices, movant should contact the Courtroom Deputy to discuss who will prepare and issue the notice and determine if a hearing is needed.** Hearing date and time will be provided by the **Courtroom Deputy**. Notice of the motion shall be served on the Debtor, parties that have entered an appearance, any creditors committee or if no committee has been appointed, the twenty largest unsecured creditors, any trustee, and the UST, ~~except as otherwise provided by S.D. Ind. B-2002-1(b).~~ If the motion also seeks abandonment, notice must be sent to all creditors and parties in interest. After distribution, the movant shall file a certificate of service in accordance with S.D.Ind. B-9013-2. The certificate of service must be filed prior to any hearing the Court has set on the motion.

Comments

In title to subparagraph (2)(A) corrected erroneous reference to Chapter 11. Phrase “at least” has been problematic because CM/ECF is set up to recognize only 14 days, so it is removed.

Subparagraph (2)(B) was edited to provide better guidance on noticing stay relief motions in Chapter 11 cases. Reference to B-2002-1(b) - which becomes 2002-1(c) if amendment to that rule is adopted - was dropped because that subparagraph only applies in Chapter 7 cases.

B-4001-3. OBTAINING CREDIT IN CHAPTER 13 CASES

(a) Dollar Limits

(1) \$1000 or Less.

The Debtor may incur non-emergency consumer debt up to one thousand dollars (\$1,000.00), including the refinancing of real property debt, without written approval of the trustee or order of the Court.

(2) Greater than \$1000.

The Debtor must seek approval of the trustee or an order from the Court before incurring non-emergency consumer debt of more than one thousand dollars (\$1,000) ~~requires the approval of the trustee or an order of the Court, under the procedures set forth in~~ using the procedures set out in subparagraphs (b) through (d) of this Rule.

Comments

Revision attempts to make more clear the distinction between amounts over \$1000 and those below.

B-4003-2. LIEN AVOIDANCE MOTIONS

(a) Requirements: All Motions

Any Debtor seeking to avoid a lien pursuant to either 11 U.S.C. §§ 522(f) or 1322(b) shall file a separate written motion as to each alleged lien holder. The motion shall identify:

- (1) the lien to be avoided and its amount; ~~and the date the debt that the lien secures was incurred;~~
- (2) the amount, listed separately, of all other liens on the property and a notation if any other lien is sought to be avoided or eliminated;
- (3) if applicable, the amount of the impaired exemption; and
- (4) the value of the subject collateral.

(b) Judicial Liens.

Motions to avoid judicial liens shall also include:

- (1) the case number and the Court where the underlying judgment was entered:
- (2) the date of the judgment; and
- (3) list the common address of any real property affected by the lien.

A sample notice and motion are available on the Court's website.

(b c) Nonpossessory, Nonpurchase Money Security Interests in Household Goods

Motions to avoid a nonpossessory, nonpurchase money security interest in household goods under 11 U.S.C. § 522(f)(1)(B) must, in addition to the requirements in paragraph (a):

- (1) specifically identify the household goods that are subject to the security interest sought to be avoided, referring to the definition of "household goods" provided in 11 U.S.C. § 522(f)(4); **and**
- (2) **state the date the debt which is secured by the lien was incurred.**

(c d) Service

The Debtor shall serve the motion and notice thereof on the lien holder, in accordance with Fed.R.Bankr.P. 9014(b) and 7004. The notice shall allow at least twenty-one (21) days from the date of service to file objections.

(d e) Filing and Certificate of Service: Notice

Along with the motion, the Debtor shall file with the Court a copy of the notice and a certificate of service in compliance with S.D.Ind. B-9013-2.

(f) Orders

An order avoiding a lien on real estate shall include both the common address and a legal description of that real estate.

Comments

The first two (now three) subparagraphs were edited to reduce confusion as to requirements for each type of motion. The movant should identify other liens **and** indicate if any other liens are sought to be avoided (by separate pleading or action). Subparagraph (f) spells out the requirement that orders avoiding liens on real estate include both the common address and a legal description, since these orders are often filed with county recorders.

B-7006-1. EXTENSIONS OF TIME

(b) Other Extensions

Any other request for an extension of time, unless made in open Court or at a telephonic pre-trial conference, shall be made by written motion. ~~If the opposing counsel or pro se litigant objects to the request for extension, the party seeking the same shall recite in the motion the effort to obtain the agreement.~~

Comments

This subparagraph of 7006-1 was not edited in last version. However, language is unclear, as it seems to suggest that motion for extension must include information about contact with opposing party concerning the extension. That requirement is clear in subparagraph (a), which allows for notices of extension. It is believed this rule was patterned on District Court Rule 6.1(d), which makes no mention of requiring contact with the other parties.

B-9010-1. APPEARANCES

(c) Withdrawal of Appearance

(1) Successor Counsel Has Not Appeared

Counsel desiring to withdraw his/her appearance in any action shall file a motion requesting leave to do so. Such motion shall fix a date for such withdrawal and shall include satisfactory evidence of either a written request to withdraw by counsel's client or a written notice regarding the withdrawal from counsel to counsel's client at least seven (7) days in advance of the withdrawal date.

(2) Successor Counsel Has Appeared

No advance notice to client is required if an Appearance by co-counsel, who will remain in the case, or if an Appearance by successor counsel, is

filed prior to or concurrently with a ~~request~~ **motion** to withdraw.
However, the attorney being replaced must file a motion to withdraw before that attorney will be removed as a counsel of record in the case unless the original attorney executed a joint substitution of appearance with new counsel or the new counsel is from the same firm as the original attorney.

Comments

Clarification made so that counsel that has been replaced understands need to file separate motion to withdraw - rather than rely on appearance of new counsel to effectuate that withdrawal. Noted exceptions are actual practice in Clerk's office - joint substitution or attorney from same firm results in removal of original attorney from case without motion to withdraw.

B-9010-2. BAR ADMISSION

- (c) In order to obtain leave of this Court to appear in a specific action, ~~an~~ **the** attorney **seeking to be admitted** must file with the Court a Motion to Appear *pro hac vice*. A separate motion for each attorney shall be filed, shall be in a form that complies substantially with the form available on the Court's website, and shall be accompanied by:
 - (1) a check payable to, "Clerk, United States District Court", in the required amount (the amount of such fee is available at www.insd.uscourts.gov), or contact the Clerk of the District Court to arrange payment by credit card;
 - (2) if not admitted to practice in the State of Indiana, an affidavit that substantially complies with the form available on the Court's website; and
 - (3) a proposed form of order granting the motion.

Comments

Deemed necessary to clear up confusion about who must file the motion - practice has been to reject motions filed on behalf of the proposed admittee by currently admitted counsel.

B-9013-2. CERTIFICATE OF SERVICE

- (b) Requirements

In addition to identifying the pleading or paper served, certificates of service shall conform substantially to the certificate of service form adopted with the ~~Electronic~~

~~Case Filing~~ **Administrative** Policies and Procedures Manual and available on the Court's website.

Comments

Edited to correct title of document that sets certificate of service requirement.

B-9027-1. REMOVAL

(b) Removal When Bankruptcy Case Pending in a Different District

A party seeking to remove a matter related to a bankruptcy case pending in another District should provide telephonic notice to the Bankruptcy Clerk of Court for the Southern District of Indiana to receive ~~the case number in which~~ **instructions on how** the removal should be filed.

Comments

In ECF, determined it was not feasible to provide dummy case number. Pending work order will allow outside filers to file a miscellaneous proceeding. Even once established, seemed simplest to invite contact with Clerk so that instructions can be given and Court is aware of impending arrival of matter.

B-9029-1. LOCAL RULES: GENERAL

(f) Conflicts Between S.D.Ind. L.R., Local and National Bankruptcy Rules

To the extent that any provision of the Local Rules for the United States District Court for the Southern District of Indiana (S.D.Ind. L.R.) differs from any provision of the Local Rules of the United States Bankruptcy Court for the Southern District of Indiana or the Federal Rules of Bankruptcy Procedure, ~~or the Interim Bankruptcy Rules~~, then that provision of the S.D.Ind. L.R. shall not apply.

Comments

Deleted reference to Interim Rules.

B-9037-1. PRIVACY PROTECTION FOR FILINGS MADE WITH THE COURT

The Court may rule upon a motion for a protective order filed pursuant to Fed.R.Bankr.P.

9037(d) or a motion to ~~withdraw~~ **remove** a document without notice or hearing.

Comments

Actual ECF event is Motion to Remove Document.